M Shahool Hameed B Mohamed Meerah v Pengarah Tanah dan Galian Negeri Selangor & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-01(NCVC)(W)-113–03 OF 2023
NANTHA BALAN, MOHD NAZLAN AND CHOO KAH SING JJCA
26 NOVEMBER 2024

Tort — Negligence — Duty of care — Purchase of non-existent land by appellant — Appellant claimed respondents negligent in keeping inaccurate record in Computerised Land Registration System ('CLRS') in land office — Whether first and second respondents could be faulted for inaccurate records found in CLRS pertaining to land which appellant claimed that he had relied on to enter into SPA to purchase piece of non-existent land

On 24 February 2014, the appellant entered into a sale and purchase agreement ('SPA') with one Salleh bin Awang ('the vendor') to purchase a piece of land ('the land') for a purchase price of RM1m. The sale and purchase transaction of the land was perfected upon the registration of the appellant's name in the issue document of title on 18 March 2014. On 4 June 2014, upon checking with the first and second respondents, the appellant discovered that the land did not exist. The appellant took out a writ action against the vendor and the respondents, but the appellant withdrew the writ with liberty to file afresh hoping that the matter could be resolved amicably with the first respondent. After several years, as there was no settlement, the appellant issued a letter of demand to the respondents and demanded for compensation for his losses, which then led to the filing of suit at the High Court. In essence, the appellant's claim against the respondents was based on an allegation that if not for the negligence of the first and second respondents in keeping an inaccurate record in the Computerised Land Registration System ('CLRS'), the appellant would not have purchased the land. The appellant asserted that the first and/or second respondent was negligent vis a vis in not keeping an accurate record in the land register via the CLRS in the land office, thereby the first and/or second respondent had breached their duties and caused the appellant to suffer monetary losses. The respondents' defence was that they had taken all necessary and reasonable steps to verify the documents in relation to the land from the time it was presented for registration until the land was transferred or registered in favour of the appellant. The learned High Court judge ('HCJ') did not find the respondents were negligent in upkeeping the record in the land registry and found that there were many inconceivable facts which raised suspicion with regard to the appellant's conduct in bringing the action against the respondents ie: (a) the appellant allegedly knew the land was worth between RM5m and RM8m, but he purchased it for a value of RM1m which was way below the

market price; (b) the appellant did not engage any land valuer to value or inspect the land; (c) an inspection of the land was only conducted two months after the full purchase price had been paid; and (d) the appellant only commissioned a survey of the land after the purchase of the land, not before. The HCJ also found that the amount claimed for damages was not substantiated with facts and not convincing, 'but mere speculation'. Hence, this appeal. Prior to the suit, the appellant had obtained a judgment against the firm of solicitors and the sole proprietor of the solicitor firm who had prepared the SPA for, inter alia, a compensation amount of RM1.11m.

Held, dismissing the appeal:

(1) The appellant had relied on the information provided by the vendor and his agent and by the first and second respondents to enter into the SPA. Thus, it was clear that the appellant did not solely rely on information from the respondents to enter into the SPA. The evidence that the appellant offered in the trial was insufficient for any finding of fact to be made as to there being negligence on the part of the respondents with regards to what the appellant had generally alleged. Misinformation in the CLRS or inaccurate information in the issue document of titles or register document of title per se was not sufficient to attach liability to the land administrator for negligence as proffered. The appellant was still required to prove that the respondents were negligent. As such, the appellant fell short in proving the first or second respondent was negligent. Additionally, it was highly unusual that the appellant did not pursue an action against the vendor to recoup his losses. It was hardly surprising that the HCJ concluded that she was in doubt of the appellant's evidence 'on the genuineness of the transaction entered into with Salleh ('vendor')'. On the issue of damages, the HCJ's findings was accepted as correct. There was no reason to disturb the findings of the HCJ (see paras 50, 53–55 & 62–64).

[Bahasa Malaysia summary

Pada 24 Februari 2014, perayu telah menandatangani perjanjian jual beli ('PJB') dengan Salleh bin Awang ('penjual') untuk membeli sebidang tanah ('tanah') dengan harga pembelian RM1 juta. Transaksi jual beli tanah tersebut disempurnakan setelah nama perayu didaftarkan dalam dokumen hak milik pada 18 Mac 2014. Pada 4 Jun 2014, setelah menyemak dengan responden pertama dan kedua, perayu mendapati bahawa tanah tersebut tidak wujud. Perayu telah mengeluarkan writ tindakan terhadap penjual dan responden, tetapi perayu menarik balik writ tersebut dengan hak untuk memfailkan semula dengan harapan agar perkara ini dapat diselesaikan secara baik dengan responden pertama. Setelah beberapa tahun, disebabkan tiada penyelesaian, perayu mengeluarkan surat tuntutan kepada responden dan meminta pampasan untuk kerugian yang dialaminya, yang kemudian membawa kepada

pemfailan saman di Mahkamah Tinggi. Pada asasnya, tuntutan perayu terhadap responden adalah berdasarkan dakwaan bahawa sekiranya tidak kerana kecuaian responden pertama dan kedua dalam menyimpan rekod yang tidak tepat di dalam Sistem Pendaftaran Tanah Berkomputer ('SPTB'), perayu tidak akan membeli tanah tersebut. Perayu menegaskan bahawa responden pertama dan/atau kedua telah cuai kerana tidak menyimpan rekod yang tepat dalam daftar tanah melalui SPTB di pejabat tanah, sehingga menyebabkan perayu mengalami kerugian kewangan. Pembelaan responden adalah bahawa mereka telah mengambil semua langkah yang perlu dan wajar untuk mengesahkan dokumen yang berkaitan dengan tanah tersebut dari waktu ia dikemukakan untuk pendaftaran sehingga tanah tersebut dipindahkan atau didaftarkan atas nama perayu. Hakim Mahkamah Tinggi yang bijaksana ('HMT') tidak mendapati responden cuai dalam menjaga rekod dalam pendaftaran tanah dan mendapati terdapat banyak fakta yang tidak boleh dipercayai yang menimbulkan syak wasangka berkaitan dengan tindakan perayu dalam membawa tindakan terhadap responden iaitu: (a) perayu didakwa mengetahui tanah tersebut bernilai antara RM5 juta hingga RM8 juta, tetapi membelinya dengan harga RM1 juta yang jauh di bawah harga pasaran; (b) perayu tidak melantik penilai tanah untuk menilai atau memeriksa tanah tersebut; (c) satu pemeriksaan terhadap tanah hanya dilakukan dua bulan setelah harga pembelian penuh dibayar; dan (d) perayu hanya menugaskan pengukuran tanah setelah pembelian tanah dilakukan, bukan sebelum itu. HMT juga mendapati bahawa jumlah yang dituntut tidak disokong dengan fakta dan tidak meyakinkan, 'tetapi sekadar spekulasi'. Oleh itu, rayuan ini. Sebelum tuntutan ini, perayu telah memperoleh penghakiman terhadap firma peguam dan pemilik tunggal firma peguam yang telah menyediakan PJB, antaranya untuk jumlah pampasan sebanyak RM1.11 juta.

Diputuskan, menolak rayuan:

(1) Perayu telah bergantung kepada maklumat yang diberikan oleh penjual dan agennya serta oleh responden pertama dan kedua untuk memasuki PJB. Oleh itu, adalah jelas bahawa perayu tidak hanya bergantung kepada maklumat daripada responden untuk memasuki PJB. Keterangan yang dibawakan oleh perayu dalam perbicaraan adalah tidak mencukupi untuk sebarang penemuan fakta dibuat mengenai kewujudan kecuaian di pihak responden berkenaan dengan apa yang secara umum didakwa oleh perayu. Maklumat yang salah dalam SPTB atau maklumat tidak tepat dalam dokumen hak milik yang dikeluarkan atau dokumen daftar hak milik sahaja tidak mencukupi untuk mengaitkan liabiliti kepada pentadbir tanah atas kecuaian seperti yang dinyatakan. Perayu masih diwajibkan untuk membuktikan bahawa responden telah cuai. Oleh itu, perayu tidak berjaya membuktikan bahawa responden pertama atau kedua adalah cuai. Selain itu, adalah sangat luar biasa bahawa perayu tidak mengambil tindakan terhadap

penjual untuk mendapatkan semula kerugiannya. Tidak menghairankan bahawa HMT menyimpulkan keraguan terhadap keterangan perayu 'mengenai kesahihan transaksi yang dibuat dengan Salleh ('penjual')'. Mengenai isu ganti rugi, penemuan HMT diterima sebagai betul. Tiada alasan untuk mengganggu penemuan HMT (lihat perenggan 50, 53–55 & 62–64).]

Cases referred to

Blyth v Birmingham Waterworks Co (1856) 156 ER 1047 (refd)
Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong [2016] 6 MLJ 413; [2016] 9 CLJ 297, FC (refd)
Siew Yaw Jen v Majlis Perbandaran Kajang and another appeal [2015] 4 MLJ 411; [2015] 5 CLJ 189, CA (refd)
Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 8 MLJ 713; [2012] 3 CLJ 271, HC (refd)

Legislation referred to

National Land Code ss 22, 90, 166(d), 168, 384, 385, Forms 14A, 5F, K
Public Authorities Protection Act 1948 s 2(b)

Appeal from: *M Shahool Hameed bin Mohamed Meerah v Pengarah Tanah Dan Galian Negeri Selangor & Ors* [2023] MLJU 981 (High Court, Shah Alam)

Asheeq Ali bin Sethi Alivi (with Ananciata Margaret Diego) (Asheeq Ali & Co) for the appellant.
Siti Radziah bt Kamarudin (with Mohd Abdul Hakim bin Mohd) (Assistant Legal Advisor, Selangor State Legal Advisor's Office) for the respondents.

Choo Kah Sing JCA:

INTRODUCTION

[1] In essence, the appellant's claim against the respondents at the court below was based on an allegation that if not for the negligence of the first and second respondents in keeping an inaccurate record in the *Sistem Pendaftaran Tanah Berkomputer* or Computerised Land Registration System ('SPTB' or 'CLRS'), the appellant would not have purchased a piece of land. The appellant had relied on the misinformation in the SPTB and a title deed issued by the first and/or second respondent to purchase the land. However, there was no physical land because the purported land had already been compulsorily acquired 40 years ago.

[2] The appellant asserted that the first and/or second respondent was negligent vis a vis in not keeping an accurate record in the land register via the

SPTB in the land office, thereby the first and/or second respondent had breached their duties, and caused the appellant to suffer monetary losses. With regard to the claim against the third respondent, the third respondent was vicariously liable for the negligence of the first and second respondents.

SALIENT FACTS

The appellant's case

[3] In the statement of claim, the appellant pleaded that on 24 February 2014, the appellant entered into a sale and purchase agreement ('SPA') with one Salleh bin Awang ('the vendor') to purchase a piece of land known as Geran Mukim 946, Lot 3669, Bandar Selayang, Tempat 9th Mile Rawang Road, Daerah Gombak, Negeri Selangor with approximately 2.0487 hectare ('the said land') for a purchase price of RM1m ('the purchase price') (see E5, pp 19–30). The sale and purchase transaction of the said land was perfected upon the registration of the appellant's name in the issue document of title via presentation No 1221/2014 on 18 March 2014.

[4] On 4 June 2014, upon checking with the first and second respondents, the appellant discovered that the said land did not exist. On 6 June 2014, the appellant lodged a police report (Report No SEAPARK/004187/14) to protect his interest upon the discovery of the non-existence of the said land which he had purchased.

[5] On 28 November 2014, the appellant took out a writ action via suit 22NCVC-566–11 of 2014 ('Suit 566') against the vendor and the same respondents here, but the appellant withdrew the said writ with liberty to file afresh. The appellant said he was hopeful that the matter could be resolved amicably with the first respondent. After several years, as there was no settlement, the appellant through his solicitors Tetuan Zuri & Co issued a letter of demand dated 6 December 2018 to the respondents and demanded for compensation for his losses, which then led to the filing of Suit BA-21NCvC-30–06 of 2019 ('Suit 30') at the court below on 14 June 2019.

[6] Before filing this suit at the court below, sometime in 2014, the appellant had brought an action against the firm of solicitors Tetuan Raja Raman & Associates (as the first defendant) and Rajasegaran a/l Raman, the sole proprietor of the said solicitor firm (as the second defendant) who had prepared the SPA via Civil Suit No 22NCVC-414–08 of 2014 ('Suit 414'). On 22 April 2015, the appellant had obtained a judgment against the defendants in Suit 414 for, inter alia, a compensation amount of RM1.11m (see E5, p12/203).

The respondents' case

[7] The respondents' defence in Suit 30 was that they had taken all necessary and reasonable steps to verify the documents in relation to the said land from the time it was presented for registration until the said land was transferred or registered in favour of the appellant. At all material times, the first and second respondents did not find anything that could give rise to suspicious activity on the status of the said land. The respondents had acted in good faith in carrying out their exercise of power or performance of duty conferred or imposed on them by and under the National Land Code ('the NLC'). The respondents relied on s 22 of the NLC and s 2(b) of the Public Authorities Protection Act 1948 for protection from any liability whilst carrying out their duties in good faith.

[8] The respondents pleaded that they in fact were victims of fraud. The respondents averred that as early as September 1975, the said land was part of an acquisition exercise in the district of Gombak for the purpose of construction of 'Tapak Pusat Bandar Ibu Daerah Gombak'. The acquisition of the said land was published in the Government Gazette on 25 September 1975 (see E5, pp 96–100/203, particularly pp 99/203). At that material time, the said land was known as EMR 4128, Lot 3669, Mukim Batu, Daerah Gombak, Negeri Selangor, and the named registered proprietors were one Lim Hee and Lim Shang Lai ('the original owners').

[9] The original owners had been compensated for their acquired land according to the law. However, the original owners did not surrender the original title deed of the said land to the appropriate authority for cancellation and for the endorsement on the register document of title or update on the registrar's records to reflect the acquisition of the said land. As a result of the failure by the original owners to surrender the original title deed, the land office did not endorse on its records the acquisition of the said land that had taken place. On 13 October 1988, the said land was transferred to Shah Alam Properties Sdn Bhd to carry out the purpose of acquisition.

[10] Many years passed. On 10 October 2005, Lim Hee applied for a replacement title for the said land because he claimed he had misplaced the original title deed. The second respondent went ahead to process the request for a replacement of title deed. On 27 October 2005, the second respondent, after having verified that the relevant documents that had been submitted to its office were in order, issued a title in continuation pursuant to ss 166(d) and 168 of the NLC. When the title in continuation was issued, the title deed reference had changed from GM 898, Lot 3669, Mukim Batu to GM 946, Lot 3669, Bandar Selayang.

[11] After the issuance of the title in continuation, on 25 October 2005, the second respondent proceeded to obtain a plan of the said land for the purposes of record in the SPTB.

[12] Initially, the record in the SPTB captured the old title deed of the said land as GM 898, Lot 3669, Mukim Batu, which was registered on 1 March 2002. After the title in continuation was issued, and a new title number was allocated/assigned to the said land, the records in the SPTB of the said land were changed from GM 898, Lot 3669, Mukim Batu to GM 946, Lot 3669, Bandar Selayang on 10 December 2005.

[13] On 14 December 2005, the second respondent issued Form 5F (notice to take out issue document of title — s 90) to Lim Hee to collect the replacement title or title in continuation (see E5, p 109/203). Lim Hee and Lim Shang Lai had on 6 October 2005 affirmed a declaration form to authorise one Ng Kian Seng to deal with any matter in relation to the said land, and the declaration form was forwarded to the second respondent earlier together with the relevant documents for the application of the replacement of lost title deed (see E5, pp 107/203).

[14] The respondents further stated that after the issuance of the title in continuation, according to records, on 14 December 2012, the original owners executed a power of attorney in favour of one Tan Chin Huat ('donee') ('the PA') (see E5, pp 128–133/203) in relation to the said land. The said PA was prepared by a firm of solicitors Messrs Ku Rahman & Associates, and the PA was registered with the Kuala Lumpur High Court via presentation No 271/13 on 21 January 2013.

[15] Empowered by the PA, the donee sold the said land to the vendor (Salleh bin Awang) via a sale and purchase agreement dated 7 January 2013 for a purchase price of RM1.2m (see E5, pp 134–147/203). The same firm of solicitors Messrs Ku Rahman & Associates who prepared the PA also prepared the sale and purchase agreement, and the solicitors firm acted for the donee in the sale and purchase transaction.

[16] The respondents averred that when the relevant documents were presented at the land office for transfer of ownership of the said land from the original owners to the vendor, all the relevant documents were in order as they were witnessed and certified by solicitors. The respondents could not trace any irregularity and were not aware the said land had been acquired because the acquisition of the said land was not reflected in their records. The second respondent, after having verified and was satisfied with that documents presented before the land office were in order, effected the transfer of

proprietorship of the said land from the original owners to the vendor on 11 October 2013 via presentation No 6270/2013. A

[17] On 24 February 2014, the appellant entered into the SPA with the vendor to purchase the said land. The second respondent averred that all the relevant documents presented at the land office in support of the transfer of ownership of the said land from the vendor to the appellant were in order. The second respondent then proceeded with good faith to effect the transfer. The Form 14A was dated 24 February 2014, the same day as the SPA, and it was presented to the land office on 18 March 2014 via presentation No 1221/2014. The transfer was then perfected on 18 March 2014 (at 1.22pm). B C

[18] The respondents also averred that the appellant failed to carry out a proper investigation of the said land before entering into the SPA. Insofar as the respondents were concerned, they had acted in good faith based on the documents presented to the land office for the numerous transfers of the said land. All these documents were properly verified and certified as true copies by solicitors. D

[19] Further, the respondents were not involved in the development of the said land. Hence, the respondents could not be held responsible for the appellant's loss, as the respondents had at all material times acted in good faith in carrying out their duties. E

THE FINDINGS OF THE HIGH COURT F

[20] The learned High Court judge observed that it was not the appellant's pleaded case that the respondents had negligently issued a replacement title (or title in continuation), and this can be seen from para [39] of the grounds of judgment which is reproduced below: G

> [39] It is pertinent that the plaintiff did not plead that the replacement title was negligently issued. There is nothing in the statement of claim to suggest that this fact was the pleaded case of negligence.

H

[21] The learned High Court judge did not find the respondents were negligent in upkeeping the record in the land registry.

[22] The learned High Court judge had scrutinised the testimony of DW1 Mohd Shahril bin Yaakob, Penolong Pegawai Daerah PDT Gombak, and concluded that his explanation as to what had transpired based on the record found in the land office was reasonable. I

[23] In gist, DW1 explained that when the land office issued the title in

A continuation, the land registrar was not aware that the said land had been acquired, as there was no such information in the system that captured the status that the said land had been acquired. There was no information that could suggest the original owners did not surrender their original title after the acquisition and compensation had taken place.

B

[24] DW1 said that because of the fact that the original owners did not surrender the original title deed, therefore endorsement of Form K (of the NLC) on the register document of title could not be done. It was only when the appellant complained to the land office, and upon an investigation being carried out, that the land office discovered that fraud had been perpetrated by the original owners in 2005 in applying to apply for a title in continuation to replace the alleged missing original title deed.

C

D **[25]** At all material times before the discovery of the fraud, the transfers of ownership of the said land were supported by relevant documents and complied with the requirements in the NLC for registration of transfer of ownership of land.

E **[26]** The respondents had acted in good faith at all material times, and they could not have and would not have discovered the fraud or that the said land had been acquired way back in September 1975.

F **[27]** The learned High Court judge went to state as follows:

> [46] In addition, I am of the view that the mere fact that a title was issued for a land which had been subject to acquisition cannot be *ipso facto* negligence. The defendants were not privy to the fraudulent application for a replacement title. But for the fraud, the plaintiff would not have entered into the SPA with Salleh. To my mind, this was the actual contributory cause of his alleged loss. They were supervening events which would supersede any lapse if at all, on the part of the defendants.
>
> G
>
> [47] I have drawn the inferences of fraud based on the facts from the documents adduced. The suspicion of fraud is fortified by the preliminary findings of the Commercial Crime Division of the police force and the subsequent entry of the Registrar's caveat on the said land on 11 January 2017.
>
> H
>
> [48] In view of my findings on the evidence adduced on the issue of breach, I conclude that the defendants were not in breach of their duty to maintain an accurate record in the CLRS as alleged.

I

[28] Besides the negative finding of negligence on the part of the respondents, the learned High Court judge went further to examine the appellant's knowledge of the circumstances pertaining to the purchase of the said land.

[29] The learned High Court judge found there were many inconceivable facts which raised suspicion with regard to the appellant's conduct in bringing the action against the respondents. First, the appellant allegedly knew the said land was worth between RM5m and RM8m, but he purchased it for a value of RM1m which by all accounts was way below the market price. Secondly, the appellant did not engage any land valuer to value or inspect the said land. Thirdly, an inspection of the said land was only conducted two months after the full purchase price had been paid. Fourthly, the appellant only commissioned a survey of the land after the purchase of the said land, not before. The learned High Court judge concluded as follows:

> [56] In the light of the circumstances mentioned, I doubt his evidence on the genuineness of the transaction entered into with Salleh. Consequently, I do not regard the evidence in support of his case of negligence to be plausible.

[30] For completeness, the learned High Court judge went on to discuss the claim for damages. As to the claim for economic loss, the learned High Cout judge found the amount claimed was not substantiated with facts and not convincing, 'but mere speculation' The appellant already obtained a judgment against Tetuan Raja Raman & Associates for a sum of RM1.11m, therefore, it was misconceived to again claim for the same amount from the respondents. There was no evidence that the appellant suffered from mental or emotional distress, therefore, there was no basis to award such damages, said the learned High Court judge.

THE FINDING OF THIS COURT

[31] We have examined the respective parties' counsels' submissions, both oral and written. We have also examined the evidence at the court below. Our findings are as follows.

[32] The crux of the appellant's appeal centers on one main point which is whether the first and second respondents could be faulted for the inaccurate records found in the SPTB (or the CLRS) pertaining to the said land which the appellant claimed that he had relied on to enter into the SPA to purchase a piece of non-existent land.

[33] The appellant's counsel referred us to the Federal Court decision in *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong* [2016] 6 MLJ 413; [2016] 9 CLJ 297, which addresses the legal point whether there was a difference between ss 384 and 385 (of the NLC) in an action of negligence premised on the cause of action of the failure on the part of the land administrator to ensure the particulars in the register of titles are accurate.

[34] Based on the finding of facts in that case, the apex court at paras [26] and [27] stated as follows:

> [26] The indisputable fact is that the very same piece of land appears registered in the records of the second defendant under two different title numbers and two different names. This clearly points to the case of the failure on the part of the second defendant to ensure that the particulars of the Register of Title as maintained by the second defendant are accurate. As correctly noted by the High Court and the Court of Appeal this fact is the *causa causan* of the plaintiff's case against the second and the third defendants.
>
> [27] The second defendant's witness DW1 in his evidence stated that the Land Title No GRN 232 had been wrongly created in the year 2006 by an unknown third party. It is also in the evidence of DW1 that he did not know how the unknown third party was able to create the fake or fraudulent title in the data base of the computer system of registration in the office of the second defendant. However, in his cross-examination DW1 admitted that what had transpired in the instant case was the responsibility of the second defendant, even though it was an unknown third party which had caused the creation of the fake or fraudulent title in 2006 because the registration of the particulars in the second defendant's records was the responsibility of the second defendant.

[35] The apex court found that because of the admission made by the second defendant (the Pendaftar Hakmilik Wilayah Persekutuan) that there was someone who had caused the creation of the fake or fraudulent title in 2006 in the second defendant's record which was under its care and control, therefore, there was a breach of statutory duty imposed on the second respondent. The apex court held as follows:

> [28] On the unequivocal admission of the second defendant through its witness DW1 above, we are of the view that there has been a breach of the statutory duty imposed on the second defendant and its negligence in the manner in which it had maintained its record resulting in the loss occasioned to the plaintiff.

[36] In reference to the defendant relying on the protection of s 22 of the NLC, the apex court held as follows:

> [30] We agree with the finding of the Court of Appeal that the intended protection under s 22 of the NLC is for a wholly different set of circumstances. The existence of two sets of record of title under two different persons as the registered owners of the same property *without reasonable explanation* definitely will not qualify to be an act done in good faith and in the intended exercise of any power, or performance of any duty, conferred or imposed on him by or under the Act.

[37] The apex court also affirmed an earlier High Court decision in *Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors* [2012] 8 MLJ 713; [2012] 3 CLJ 271, which held that the land administrator 'owed a duty of care to ensure that when searches are made by the members of the

public at the land registrar would be acting on accurate information and a properly maintained and accurate registrar of titles'. A

[38] In the High Court case, there was an error made by the land administrator in recording the name of the fourth defendant who was not the owner of the subject land on the computerised issue document of title. The High Court held as follows: B

> [10] The first defendant has admitted there was an error in the inclusion of the name of the fourth defendant on the computerised issue document of title for the said land and the position of the first defendant was the issue document of title held by the plaintiff was still valid. There never was any evidence to suggest that a notice had been sent to the plaintiff to surrender the old title in exchange for the new computerised title. The computerised title was to be a title in continuation. I find that the computerised title being issued in the name of the fourth defendant was in contravention of the 14 Schedule of the National Land Code. To compound it further the fourth defendant itself is a non-entity ie, it is not a duly registered company with the Suruhanjaya Syarikat Malaysia (SSM) (see the evidence of DW4 Mardiana bt Mohd Zain). C D

[39] From the above cases, three legal proposition that may be distilled. First, the land administrator owes a duty of care to the members of the public to maintain an accurate record of the land registry which is kept and maintained in the land office. E

[40] Secondly, in the event any inaccurate information is found in the record of the land registry or any misinformation in the SPTB without a reasonable explanation given, then the protection under s 22 of the NLC would not avail to the officer(s) to disclaim responsibility. F

[41] Lastly, a finding of liability on the part of the land administrator has to be based on the evidence or acknowledgement of specific wrong doing or errors and not merely any inaccurate information in the record of the land registry or misinformation in the SPTB. Inaccurate information in the record of the land registry or misinformation in the SPTB would not *ipso facto* mean the land administrator was negligent, and therefore in breach of his statutory duty or common law duty of care. The claimant's case is still subject to proof that the land administrator had committed a specific act or there was specific omission that amounted to a breach of his duty of care. G H

[42] 'Negligence' is said to be 'the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do' (see *Blyth v Birmingham Waterworks Co* (1856) 156 ER 1047, p 1049). In a similar vein, the Court of Appeal in *Siew* I

Yaw Jen v Majlis Perbandaran Kajang and another appeal [2015] 4 MLJ 411 at p 419; [2015] 5 CLJ 189 at p 198 held that 'the tort of negligence requires first of all that there be a duty of care on the part of the plaintiff (Kajang Municipal Council) not to do any or omit to do any act the doing of which or the omission of which could foreseeably affect other persons resulting in damage or loss to such other persons. The tort is complete when the act is done or omitted to be done and damage or loss is caused by that act or omission'.

[43] There was an act done in both *Poh Yang Hong* and *Uptown Properties Sdn Bhd* which had resulted the claimants therein suffered damage and loss. The wrongful act in *Poh Yang Hong* was that an unknown third party had been allowed to create a fake or fraudulent Land Title GRN 232 in the data base of the computerised system of registration in 2006, in view that the data base of the computerised system of registration was maintained and kept under the care and control of the land administrator. It was on this fact that the land administrator was found to be negligent. The wrongful act in *Uptown Properties Sdn Bhd* was that a staff under the control of the land administrator had erroneously included the wrong name as the owner of a piece of land on the computerised issue document of title when in fact the same piece of land actually belonged to someone else. Clearly, the erroneous inclusion of someone else's name in the computerised issue document of title was an act of negligence. In both cases, an act of negligence and a breach of duty were made out against the land administrator. Further, in both cases there were admissions or acknowledgements by the land administrator of the acts or omissions of negligence.

[44] Coming back to our present case, the pleaded acts of negligence on the parts of the first and second respondents could be condensed to: (i) failure to ensure, maintain and upkeep accurate information in the SPTB; (ii) failure to reject the registration of transfer of ownership in favour of the appellant for not taking into consideration of the non-existent land;and (iii) issued official land searches which were not updated that had led the appellant to purchase a piece of non-existent land. Based on these facts, the appellant pleaded that the first and second respondents were negligent as follows:

> ii) GAGAL untuk mempraktikkan sebarang bentuk kawalan yang wajar untuk memastikan tidak wujud pengeluaran hakmilik tanah bertindan dan/atau geran hakmilik tanpa kewujudan hartanah fizikal;
>
> iii) GAGAL memberikan penjagaan serta perhatian yang patut dan rapi terhadap kerja-kerja yang dijalankan di premis Defendan Pertama dan Kedua dan/atau dalam rekod di dalam Sistem Pendaftaran Tanah Berkomputer (SPBT) untuk memastikan tidak wujud pengeluaran geran hakmilik tanah bertindan atau geran hakmilik tanpa kewujudan hartanah fizikal;

[45] The above two alleged acts of negligence have to be confined to the facts

that were pleaded in the appellant's statement of claim. The appellant did not plead, nor did the appellant mention the negligence (if any) on the part of the first or second respondent in issuing the title in continuation in October 2005. This was pointed out by the learned High Court judge as mentioned earlier. Therefore, the acts of negligence alleged or pleaded by the appellant have to be confined to those facts revolving around the time when the appellant decided to purchase the said land, and not those facts before that which include the issuance of the title in continuation.

[46] In the first part of the appellant's witness statement, he stated as follows (see E4, pp 123/169):

> S-10: Bila kamu menandatangai Perjanjian Jual Beli bagi Hartanah tersebut?
>
> J: Berdasarkan pengesahan oleh Penjual dan/atau ejennya berhubung lokasi fizikal hartanah tersebut dan pengesahan pemilikan dan kewujudan hartanah tersebut di dalam daftaran dan rekod Defendan-Defendan, maka saya telahpun menandatangai perjanjian jual beli tersebut pada 24.2.2014 untuk pembelian Hartanah tersebut.

[47] Based on the above testimony, the appellant had relied on the information given by the vendor and his agent in regard to the existence of the physical land to enter into the SPA. The appellant also said that he had relied on the verification of the ownership and the existence of the land from the record and registration of the first and second respondents. Therefore, the appellant could not put the entire blame on the respondents for failing to keep a proper record.

[48] In the second part of the appellant's testimony, he went on to say this (see E4, pp 135–6/169):

> S-29: Boleh jelaskan mengapa tuntutan ini difailkan terhadap Defendan-Defendan?
>
> J: Defendan-Defendan adalah pihak yang bertanggungjawab sebagai pihak berkuasa yang mengawalselia, memantau dan memastikan hal ehwal berkaitan dengan hartanah dan pemilikan hartanah serta lain-lain yang berkaitannya di Negeri Selangor
>
> Defendan-Defendan mempunyai tugas berhati-hati ke atas saya bagi memastikan pendaftaran hakmilik hartanah tersebut sewaktu pendaftarannya ditolak lanjutan dari ketidakwujudan hartanah tersebut.
>
> Saya sesungguhnya percaya dalam setiap keadaan Defendan-Defendan adalah pihak yang bertanggungjawab sebagai pihak berkuasa yang mengawalselia, memantau, mentadbir pendaftaran serta kemaskini hakmilik dan geran.
>
> Maka adalah tanggungjawab mereka bagi memastikan hal ehwal berkaitan dengan hartanah dan pemilikan hartanah serta lain-lain yang berkaitannya di Negeri

Selangor adalah dikemaskinikan bagi membolehkan saya mengetahui status paling tepat berhubung dengan ketidakwujudan hartanah tersebut sekaligus melindungi saya daripada sebarang manipulasi oleh mana-mana pihak lain terhadap apa-apa hakmilik dan geran yang tidak dikemaskinikan

S-30: Boleh gambarkan kepada Mahkamah apakah peluang kamu untuk meneruskan dengan pembelian Hartanah tersebut sekiranya kamu mempunyai pengetahuan terhadap keadaan sebenarnya?

J: Sudah tentu penjualan hartanah tersebut tidak dapat dilakukan dari awal lagi sekiranya Defendan Pertama dan Kedua mengemaskinikan rekod mereka.

Saya sesungguhnya adalah bergantung sepenuhnya kepada rekod-rekod pendaftaran hakmilik dan geran yang dibawah pentadbiran Defendan Pertama dan Kedua yang merupakan satu-satunya badan Kerajaan yang dipertanggungjawabkan di bawah Kanun Tanah Negara 1965 untuk mentadbir pendaftaran serta kemaskini hakmilik dan geran hartanah di negeri Selangor Darul Ehsan bagi memastikan keesahan geran hakmilik dan kewujudan Hartanah tersebut.

Saya juga menyatakan bahawa Defendan Pertama dan Kedua seharusnya melaksanakan langkah-langkah tertentu bagi memastikan, tanpa mengambilkira sama ada pemilik asal telah memulangkan geran asal atau tidak bahawa rekod dalaman mereka adalah dikemaskinikan dengan mengambilan tanah tersebut dan/atau sekurang-kurangnya menggunakan budibicara mereka untuk memasukkan kaveat pendaftar keatas hakmilik asal tersebut bagi mengelakkan apa-apa manipulasi oleh pihak-pihak tertentu yang boleh memudharatkan pembeli bona fide seperti saya yang mempunyai jangkaan yang sah (*legitimate expectation*) apabila membeli hartanah tersebut.

Oleh itu saya sesungguhnya percaya bahawa Defendan-Defendan telah gagal mematuhi tugas berhati-hati tersebut sehingga mengakibatkan saya telah mengalami kerugian besar akibat kecuaian tersebut.

[49] The appellant went on to make a general allegation that the first and second respondents should not have issued the title in continuation if the original owners did not return the original title deed or that they should have updated their information in the system that the said land had been acquired.

[50] Insofar as the information relied on by the appellant to enter the SPA, the appellant acknowledged that he had relied on the information provided by the vendor and his agent and by the first and second respondents to enter into the SPA. Thus, it is clear that the appellant did not solely rely on information from the respondents to enter into the SPA.

[51] Based on the appellant's testimony, the appellant merely made a general allegation that the respondents should have taken steps to ensure that their records were updated with the acquisition and should have entered a registrar's caveat. This was not the appellant's pleaded case. Even if this court is to consider this general allegation made by the appellant, the appellant failed to

call the specific person(s) who were involved in the acquisition to testify in order to prove there was negligence on the part of the respondents with regards to the updating of the record on the acquisition as alleged by the appellant.

[52] With regard to the appellant's allegation on the alleged negligence in the issuance of the title in continuation, this was also not the appellant's pleaded case. Even if this court is to consider this general allegation made by the appellant, the appellant failed to call the specific person(s) who were involved in the issuance of the title in continuation to testify in order to prove there was negligence on the part of the respondents with regards to the issuance of the title in continuation.

[53] This court finds that the evidence that the appellant offered in the trial was insufficient for any finding of fact to be made as to there being negligence on the part of the respondents with regards to what the appellant had generally alleged.

[54] *Poh Yang Hong* imposes a duty of care on the land authority to keep an accurate information in the SPTB and also to properly maintain the registrar of titles. The apex court did not impose a strict liability on the land administrator without the need on the claimant's part to prove negligence. Misinformation in the SPTB or inaccurate information in the issue document of titles or register document of title per se is not sufficient to attach liability to the land administrator for negligence as proffered earlier. The appellant was still required to prove that the respondents were negligent.

[55] As such, the appellant fell short in proving the first or second respondent was negligent. The appellant could not circumvent the legal burden to prove his case by merely taking the position that 'I relied on the records kept by the respondents, and they were inaccurate, and therefore, the respondents are negligent'. Inaccurate information in the SPTB or inaccurate information records kept with the land registrar per se is insufficient in law to attach liability for negligence to the respondents.

[56] This court observes that in the present case, DW1 representing the first and second respondents in the trial did not admit there was error on the part of the respondents. During cross-examination, DW1 stated as follows (see E4, pp 106/169):

> S7: Tadi tuan kata tak pasti pasal kecuaian tapi berdasarkan pada jawapan-jawapan lain, dengan isu wujudnya dalam rekod pengambilan tanah dan kemudian dalam Title yang sebenarnya wujud, setuju saya katakana, ada wujud kesilapan ataupun permission dalam urusan SPTB, dalam system di dalam Pejabat Tanah defendan? Setuju saya katakan wujud kesilapan?

J: Wujud kesilapan ... saya tak boleh nak memberi jawapan bahawa setuju ata [atau] tidak lah berkenaan SPTB tu ada ke tidak.

S: Baik, saya katakana jawapan tuan adalah tidak pasti atau tuan tak menjawab. Boleh saya katakana tuan tak nak jawab soalan ni?

J: Haa, saya jawab, saya kata memang saya tak pasti la kalau ikutkan.

PP: Tak pasti ya, tuan.

[57] This court is of the view that DW1's answer that he could not give any answer as to whether there was error was reasonable in view of the fact that DW1 did not have personal knowledge regarding the acquisition and the issuance of the title in continuation.

[58] The learned High Court judge had scrutinised the testimony of DW1 and accepted his explanation. The learned High Court judge had also taken into consideration in totality of the appellant's evidence and found that the appellant had failed to prove that the first and second respondents were in breach of their duty to maintain an accurate record in the SPTB.

[59] As pointed out by the learned High Court judge and as observed by this court, there are several facts from the appellant's narrative that we find hard to accept. First, the appellant was a retiree and not in the development business. He said he wanted to purchase a piece of land to venture into development business. The appellant did not visit the site of the purported land, neither did he instruct his agent Hussain to inspect the site. He only instructed Hussain to conduct an official land search (see E4, pp 121/169; and E5, pp 175–178/203 (second land search dated 20 February 2014)). It is hard to believe the appellant could purchase a piece of land worth millions without checking or inspecting the site.

[60] Secondly, the appellant allegedly knew that the purported land was worth between RM5m and RM8m, and yet without carrying out a proper due diligence exercise, he signed the SPA swiftly and paid RM350,000 to the vendor on 24 February 2014. In less than two months, the appellant paid the balance purchase price (partly through a set off of a piece of land which belonged to him worth RM500,000 and payment of the balance by cash) and got the purported said land transferred into his name on 21 March 2014. This was not common behavior in a land sale and purchase transaction, and the completion of the sale and purchase transaction appeared to have been done in a hasty manner.

[61] Thirdly, it was only after the transfer was completed did the appellant engage a land surveyor to verify and ascertain the boundary of the said land. It is strange for the appellant to allege that a feasibility study report of a proposed

development was done before the boundary of the said land was verified and ascertained. This court is of the view that the appellant's narrative of events sounds incredulous.

[62] Lastly, this court finds it highly unusual that the appellant did not pursue an action against the vendor to recoup his losses. The appellant did not include the vendor as a defendant in this High Court action. The appellant had withdrawn the earlier action he had filed against the vendor.

[63] In view of the unusual circumstances, it is hardly surprising that the learned High Court judge concluded that she was in doubt of the appellant's evidence 'on the genuineness of the transaction entered into with Salleh (vendor)'.

[64] On the issue of damages, this court accepts the learned High Court judge's findings (in paras [57] to [64] of Her Ladyship's grounds of judgment) as correct. This court finds no reason to disturb the findings of the learned High Court judge.

SUMMARY

[65] This court, after having scrutinised all the evidence at the trial court and after having examined the submissions of the respective counsels, is satisfied that the appellant had failed to discharge his burden of proof to establish that the first and/or second respondent was negligent.

[66] Although there was misinformation recorded in the SPTB, the appellant failed to call relevant witnesses to adduce the evidence to prove that the first and second respondents were negligent. The appellant could not just rely on the evidence of the land searches and issue document of title as proof of negligence on the part of the first and/or the second respondent. Negligence on the part of the land administrator is not proven ipso facto by mere misinformation in the SPTB and inaccurate record in the land registry.

CONCLUSION

[67] For the reasons and analysis of the evidence above, this court, in a unanimous decision, finds no error of law or facts had been committed by the learned High Court judge that could warrant this court to disturb Her Ladyship's decision. Hence, the appellant's appeal is hereby dismissed with costs of RM10,000 to be paid by the appellant to each of the respondents.

A *Appeal dismissed.*

Reported by Nabilah Syahida Abdullah Salleh

B

C

D

E

F

G

H

I